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Gibraltar

Working paper prepared by the Secretariat

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I. General

1. Gibraltar is a Non-Self-Governing Territory administered by the United Kingdom of Great Britain and Northern Ireland. The Territory is a narrow peninsula extending southward from the south-west coast of Spain, to which it is connected by an isthmus about 1.6 kilometres long. The Spanish port of Algeciras lies 8 kilometres across the bay to the west; the continent of Africa is situated 32 kilometres across the Strait of Gibraltar to the south. According to the administering Power, the area of Gibraltar is 5.8 square kilometres; according to Spain, which claims sovereignty over the Territory, it is 4.8 square kilometres. Issues relating to the water off Gibraltar continue to be a subject of contention. In 2007, the Territory had a population of 29,257.[1]

II. Constitutional, legal and political issues

2. In accordance with the Gibraltar Constitution Order 2006, which came into force on 2 January 2007, the Governor of Gibraltar represents the British monarch in the Territory. The Governor is responsible for the conduct of external affairs, defence, internal security (including the police, in conjunction with the Police Authority for Gibraltar) and for certain appointments as conferred on him by the Constitution. The Governor, together with the Council of Ministers, constitutes the Government of Gibraltar.[2] Following an election, the Governor, acting at his discretion, shall appoint as Chief Minister the elected member of the Parliament who, in his judgement, is most likely to command the greatest measure of confidence among the elected members of the Parliament. Other ministers shall be appointed by the Governor, acting in accordance with the advice of the Chief Minister, from among the elected members of the Parliament.

3. Gibraltar has a Supreme Court allowing for appeals to a Court of Appeal and thence to Her Majesty in Council, acting on the Privy Council's advice. The 2006 Constitution provides for the establishment of a Judicial Service Commission, which was set up under the Judicial Service Act 2007, Act No. 2007-26.[3] The Judicial Service Commission has executive powers, subject only to an exceptional power of veto by the Governor, to advise the Governor in respect of certain matters, such as the appointments to the offices of the Chief Justice and other members of the judiciary. The Governor, with the prior approval of a secretary of State, may disregard the advice of the Judicial Service Commission in any case where he judges that compliance with that advice would prejudice the British monarch's service.[2]

4. Under the Gibraltar Constitution of 2006, the British monarch retains full power to make laws from time to time for the peace, order and good government of

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Note: The information contained in the present paper has been derived from information transmitted to the Secretary-General by the administering Power under Article 73 (e) of the Charter of the United Nations and from information provided by the Government of Spain and other published sources, including those of the territorial Government.

[1] Information provided by the administering Power, 19 February 2009.

[2] See www. gibraltar.gov.gi/constitution/new_constitution/NewGibraltarConstitution.pdf.

[3] See www.gibraltarlaws.gov.gi/articles/2007-26o.pdf.

Gibraltar. Included in those powers are laws amending or revoking the Constitution. The Constitution also makes provisions regarding Crown lands in Gibraltar.

5. According to the 2006 Constitution, the Governor shall dissolve Parliament in preparation for the next general election four years from the date of the first meeting of Parliament after any general election, unless it has already been dissolved.[2]

6. The last general elections in Gibraltar were held on 11 October 2007. The incumbent Gibraltar Social Democratic Party obtained 49 per cent of the vote, followed by the Gibraltar Socialist Labour Party, with almost 32 per cent and the Liberal Party with over 13 per cent.[4] Peter Caruana, leader of the Gibraltar Social Democratic Party, was reappointed Chief Minister of Gibraltar for a fourth term. Joseph Bossano of the Gibraltar Socialist Labour Party continues as leader of the opposition, which comprises the Gibraltar Socialist Party and the Liberal Party. The next elections are due to be held by the end of October 2011.[5]

7. After a 10-year campaign to exercise the right to vote in European elections, in June 2004 Gibraltarians took part in European parliamentary elections, based on the fact that they were considered by the administering Power to be part of the south-west England region for electoral purposes.

8. As previously reported, Gibraltar's 2006 Constitution is an outcome of the United Kingdom's White Paper entitled "Partnership for progress and prosperity: Britain and the Overseas Territories", presented to Parliament in March 1999 (see A/AC.109/1999/1, annex), which spoke of each Territory's need for a constitutional framework to suit its own circumstances. Negotiations ensued, and, on 27 March 2006, the Foreign Secretary of the United Kingdom announced in a written statement to the British House of Commons that the details of a new Constitution had been agreed between the delegations of the United Kingdom and Gibraltar. On 30 November 2006, the Gibraltar constitutional referendum was held, and the new Constitution was approved by 60.24 per cent of those who voted, while 37.75 per cent voted against and the remainder returned blank votes.[6]

9. In a letter dated 22 January 2007 (A/61/710), the Permanent Representative of the United Kingdom to the United Nations informed the Secretary-General that the new Constitution of Gibraltar had been given effect by an Order-in-Council on 14 December 2006 and that the new Constitution had entered into force on 2 January 2007. Noting that it recognized the right of self-determination of the Gibraltarian people, the Permanent Representative said that the new Constitution provided for a modern relationship between Gibraltar and the United Kingdom that was not based on colonialism.

10. In this connection, as previously reported, Spain stated that the Territory's 2006 Constitution was an improvement and a modernization of its Government that in no way affected the international capacity of Gibraltar, and that the adoption of the 2006 Constitution was a reform of the colonial regime, which remained unaltered. The Government of Spain further stated that the referendum of 30 November 2006 was a local initiative, which represented the democratic expression of the inhabitants of Gibraltar to give them a more efficient Government

[4] See http://www.electionresources.org/panorama/archive/2007_10_01_archive.html.

[5] See country profile: Gibraltar, at www.fco.gov.uk.

[6] Information provided by the administering Power, January 2007.

system, and that it did not affect in any way the pending decolonization process of Gibraltar, to which the principle of self-determination did not apply.[7]

11. The positions of the administering Power, the territorial Government and the Government of Spain, including in the context of the Forum of Dialogue on Gibraltar, are reflected below.

III. Budget

12. In the budget speech delivered on 3 June 2008, the Chief Minister stated that Gibraltar's public finances were in healthy surplus and that employment levels had broken new records the previous year.[8] The territorial Government's revenue was estimated at over £313 million in 2008/09 and its expenditure at £304 million.[9] Overall revenue had increased by approximately £19 million in 2006/2007 to £281 million in 2007/2008, derived mainly from higher employment levels and from higher import duty receipts.[8] According to the administering Power, £25 million was approved for investment in capital projects for the period 2008/09.[1]

13. In 2008 the territorial Government indicated that taxation rates continued to fall significantly for all taxpayers, and corporate tax rates would be reduced to 27 per cent in 2008/09. Regarding personal income taxation, the territorial Government decided that the top rate under the Gross Income Based System would be reduced from 40 per cent to 38 per cent, with effect from 1 July 2008. Also, tax payable by low-income earners would be reduced by increasing their allowance, with effect from 1 July 2008.[8] The offshore sector remains untaxed.

IV. Economic conditions

A. General

14. Gibraltar has no known natural resources and lacks agricultural land. Prior to 1980, the economy was largely dependent on United Kingdom Ministry of Defence expenditures. With the downsizing of the military base, the economy has increasingly become focused on tourism and the provision of financial services, including banking, insurance, shipping and portfolio management.

15. In his 2008 budget speech, the Chief Minister referred to Gibraltar's economy as remaining strong and buoyant and growing at a high but sustainable rate. The size and impact of the Government on the economy continued to decline as the economy grew.[8] According to the territorial Government, in 2007 the economy grew by 12.7 per cent and the gross domestic product (GDP) was £740 million.[10] According

[7] Information provided by the Government of Spain, March 2007.

[8] See Chief Minister's budget speech, 3 June 2008 at www.gibraltar.gov.gi/budget/budget2008.htm.

[9] See Government of Gibraltar www.gibraltar.gov.gi/gov_depts/govt_finance/PublicFinances2008-09Charts.pdf. Note: the currency of Gibraltar is the Gibraltar pound (£), circulating at par with the pound sterling (£).

[10] See Government of Gibraltar, budget 2008 summary, accessed at www.gibraltar.gov.gi/budget/budget2008/2008BudgetSummary.pdf.

to the administering Power, per capita GDP stood at £25,595 and the inflation rate at 4.5 per cent as at October 2007.

16. According to the administering Power, the Ministry of Defence of the United Kingdom, which used to employ over 20 per cent of the Territory's labour force, employs around 8 per cent and contributes about 7 per cent of Gibraltar's GDP.[5] As previously reported, according to Spain, information pertaining to the United Kingdom shared in the context of the Treaty on Conventional Armed Forces in Europe indicated that, as at 1 January 2008, there were 818 British armed forces personnel deployed in Gibraltar. Further information concerning Gibraltar's military installations can be found in previous working papers (see A/AC.109/2005/11 and A/AC.109/2008/8).

B. Trade

17. Gibraltar's total imports, including petroleum products, were approximately £1.3 billion during 2007, the latest available figure.[8] Around 27 per cent of Gibraltar's non-fuel imports originated from the United Kingdom. Other sources included Germany, the Netherlands and Spain. Gibraltar's total exports in 2007 were approximately £1 billion. Exports were mainly re-exports of petroleum and petroleum products supplied to shipping.[1] In 2007, the wholesale, retail and import sector of the economy constituted 14.5 per cent of GDP and provided 2,816 jobs, representing an increase during 2007 of 2.5 per cent.[8]

C. Banking and financial services

18. As previously reported, Gibraltar has a well-developed financial sector, which is regulated by an independent statutory body, the Financial Services Commission. The Gibraltar Finance Centre is charged with the marketing and promotion of financial services. Gibraltar responded to a survey in preparation of the International Monetary Fund's report on offshore financial centres issued on 8 May 2008.[11]

19. In its report issued on 6 July 2008, the House of Commons Foreign Affairs Committee recommended that the United Kingdom's Foreign and Commonwealth Office should encourage Gibraltar and other overseas territories to continue to make progress in improving financial regulation, in particular in arrangements for investigating money-laundering.[12]

20. For their part, Spain, the United Kingdom and Gibraltar, gathering at the ministerial meeting of the Forum of Dialogue, held on 2 July 2008 in London, recognized in their joint ministerial statement the value of international financial services that are carried out in a well-regulated context and that are compliant effectively with all applicable European Union and other international measures relating to money-laundering, terrorist and other serious crime financing. To this end, the three participants were determined that there would be the normal degree of cooperation, including arrangements, mechanisms and regular contacts at all levels,

[11] See imf.org/external/np/pp/eng/2008/050808a.pdf.

[12] See http://www.publications.parliament.uk/pa/reports_200708htm.

in relation to financial services policy, regulation and supervision, taxation, exchange of information and anti-money-laundering issues.[13]

D. Transportation, communications and utilities

21. Regarding road transportation in and out of Gibraltar, the arrangements that came into force on 20 December 2006 as a result of the Córdoba agreements, including the introduction at the fence/frontier of lanes in both directions and red and green channels for both people and vehicles, continue to be in place. Customs and police checks remain necessary, since Gibraltar does not belong to the European Union customs union. Moreover, the United Kingdom (and thus Gibraltar) is outside the so-called Schengen area for external borders purposes.

22. Airport landing fees generated £1.9 million in 2007-2008.[8] In September 2008, the Spanish airline Iberia discontinued flights between Madrid and Gibraltar. British Airways continues to provide air service to the United Kingdom.[14] According to reports in the media, efforts are under way to revive air links between Gibraltar and Madrid through the new airline Andalus, with one flight per day.[15]

23. The United Kingdom Government is responsible for all international obligations relating to aviation safety and security in respect of Gibraltar Airport, a military airfield available for civilian flights, with the Ministry of Defence retaining ownership of and operational responsibility for the military aviation aspects of the airfield, as previously reported.

24. In July 2008, the territorial Government signed a contract in the sum of 59 million euros with one of Spain's major construction companies for the erection of Gibraltar's new air terminal and related facilities in Gibraltar. The contract provides for completion of all works by April 2010.[16] Moreover, in November 2008, the territorial Government awarded a contract for infrastructure works to an international construction company from Madrid in the sum of approximately £30 million. The contract includes design and construction of the following: (a) a dual carriageway (four lanes) from the commercial gate at the frontier to the junction of Eastern Beach Road and Devil's Tower Road (via Eastern Beach); (b) a tunnel under the eastern end of the runway consisting of four traffic lanes, a separate tunnel for pedestrians and a cycle path, monitoring from a control centre; (c) an aviation fuel storage tank farm buried underground on the north side of the runway; and (d) an offshore structure (around 100 metres off the eastern end of the runway) to provide aircraft approach lighting. The works are expected to start in April/May 2009. According to the territorial Government, together with the new air terminal and nearby multi-storey car parks, this project represents a major investment in upgrading Gibraltar's infrastructure for the future. It also addresses one of the biggest sources of traffic congestion and delays in Gibraltar, the need to bring traffic to a standstill for up to 20 minutes when aircraft land or take off.[17]

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[13] See communiqué of the ministerial meeting of the Forum of Dialogue on Gibraltar, accessed at www.fco.gov.uk.

[14] See http://www.asap.co.uk/news/iberia-suspends-gibraltar-service-5633689.html.

[15] See www.panorama.gi, 30 January 2009.

[16] See Government of Gibraltar, press release, 7 July 2008, accessed at www.gibraltar.gov.gi.

[17] See Government of Gibraltar, press release, 17 November 2008, accessed at www.gibraltar.gov.gi.

25. As the Strait of Gibraltar is a principal water route between the Mediterranean Sea and the rest of the world, Gibraltar is used as a port by many long-distance liners and cargo ships. According to the territorial Government, the port business continued to grow during 2007, with the gross tonnage of ships calling at Gibraltar increasing by 26 per cent to 282 million gross registered tons. The ship registry also continued to grow, with the number of ships registered increasing by 32, or 15 per cent, from 217 to 249 ships.[8]

26. At the July 2008 ministerial meeting of the Forum of Dialogue, the participants agreed to facilitate the establishment of commercial maritime links between the Port of Gibraltar and ports in Spain, expressed the determination to enhance comprehensive cooperation between the ports and reaffirmed that comprehensive cooperation on maritime safety and environment issues constituted an important part of the agreed future agenda of the Forum.[13] The possibility of cooperation between Gibraltar and Spain on maritime issues was also discussed in the tripartite talks held in October 2008.

E. Tourism

27. Arrivals in Gibraltar by land comprise mainly day visitors arriving from Spain; arrivals by air are primarily from the United Kingdom, and arrivals by sea comprise ferry arrivals from Morocco and day-trip arrivals from cruise ships.[5]

28. According to the territorial Government, Gibraltar's tourism sector continued to grow in 2007. The overall number of visitors increased by 15.2 per cent to approximately 9.4 million. During 2007, the number of visitors arriving across the land frontier increased by 14.9 per cent to approximately 9 million, those arriving by sea by 29.8 per cent to 292,675, and those arriving by air by 10.9 per cent to 159,666. In the same year, the number of cruise liner passengers visiting Gibraltar rose by some 63,000 people, or 30 per cent, and the number of hotel nights sold increased by 4 per cent. In 2007, expenditure by tourists in Gibraltar increased by £20 million, or 9.5 per cent, to £230 million.[8]

V. Social conditions

A. Labour

29. In 2008, the Chief Minister stated that Gibraltar's employment levels broke new records the previous year. The number of employees in Gibraltar, at 19,696 for 2006/2007, were the highest level ever recorded and constituted an annual increase of some 6.6 per cent.[8] According to the administering Power, as at October 2007, the number of people employed by the five largest economic sectors was as follows: banking and finance (2,863), public administration and defence (2,214), wholesale and retail trade (2,154), building and construction (2,124) and gambling and betting activities (1,890). The unemployment rate was reported as 2.5 per cent.[1]

B. Human rights

30. According to the administering Power, the following major international human rights instruments apply in Gibraltar: the European Convention for the Protection of Human Rights and Fundamental Freedoms, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the United Nations Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, and the International Convention on the Elimination of All Forms of Racial Discrimination.[5]

31. Gibraltar's Constitution of 2006 includes an updated chapter on the fundamental rights and freedoms of the individual. As previously reported, the right of individual petition under the European Convention for the Protection of Human Rights was accepted by the United Kingdom on a permanent basis for Gibraltar on 14 January 2006, and Gibraltar's legislation is expected to comply with the obligations under the Convention (see A/AC.109/2008/8).

C. Social security and welfare

32. The social security and welfare sectors in Gibraltar continue to be governed by the Social Security (Employment Injuries Insurance) Act (1952), under which benefits are paid for injury, disablement and industrial deaths; the Social Security (Closed Long-Term Benefits and Scheme) Act (1996) and the Social Security (Open Long-Term Benefits Scheme) Act (1997), which cover old-age pensions, guardian allowances and widow benefits; and the Social Security (Insurance) Act (1955) and the Social Security (Non-Contributory Benefits and Unemployment Insurance) Act (1955), which include maternity grants, maternity allowances and death grants.[1]

33. According to the Chief Minister's 2008 budget speech, the Government introduced reforms to the administrative, collection and financial system relating to social insurance. The Government merged the payments of social insurance contributions with the income tax collection system and transferred responsibility for its administration to the Income Tax Office. In addition, the reformed social insurance system ensures that low-paid, part-time and casual workers pay less than previously in social insurance contributions.[8]

34. With regard to the settlement of the issue of the pensions for pre-1969 Spanish workers in Gibraltar, which had been reached at the ministerial meeting of the Forum of Dialogue on Gibraltar on 18 September 2006, the participants at the ministerial meeting of the Forum of Dialogue held on 2 July 2008 welcomed in their joint ministerial statement the United Kingdom's payment of the second tranche of the lump sum to affected Spanish pensioners in April 2008, thereby meeting the United Kingdom's obligations under the Ministerial Statement on Pensions.[18]

D. Public health

35. The Gibraltar Health Authority is responsible for providing health care in the Territory. The expenditure of the Authority for the period 2008/09 was estimated at £60.6 million.[9] As previously reported, the St. Bernard's Hospital at Europort

[18] See www.maec.es/en.

opened in February 2005 to provide a comprehensive outpatient service, as well as inpatient treatment for acute medical and surgical cases. In 2008 it was estimated that life expectancy in Gibraltar was approximately 77 years for males and 83 years for females, and the population growth rate was estimated to be 0.125 per cent.[19]

36. In 2008, the Gibraltar School of Health Studies began offering a number of new opportunities in nurse education in partnership with the Faculty of Health and Social Care Sciences at Kingston University and St. George's University, London.[20]

E. Education

37. As previously reported, education is governed by the Education and Training Act of 1974. Education is free and compulsory for children between the ages of 5 and 15. The Department of Education and Training is in charge of public education in Gibraltar, which comprises 13 primary schools and two secondary schools, as well as the Gibraltar College of Further Education and the Vocational Training Centre. According to the administering Power, expenditure on education for 2008 was approximately £23.6 million.[1]

38. In 2008, secondary schools maintained an overall pass rate of 66 per cent, reflecting, according to the Territory's Minister for Education and Training, sustained high standards in public examinations.[21] According to the administering Power, the Territory's secondary schools prepare pupils for the General Certificate of Secondary Education examinations offered by the awarding bodies of the United Kingdom. Those Gibraltarians pursuing higher education in the United Kingdom are funded by the territorial Government, which covers the cost of university and college tuition fees.

39. In September 2006, in its joint ministerial statement, the Forum of Dialogue on Gibraltar welcomed the proposal of the Government of Spain to open an Instituto Cervantes in Gibraltar (see A/AC.109/2007/12). At the ministerial meeting of the Forum of Dialogue held in July 2008, it was recognized that bilingualism in languages such as English and Spanish, which together are spoken by a large proportion of the planet's people, represented a significant social and economic opportunity for citizens of Gibraltar and the whole region, in particular the Campo de Gibraltar, who were particularly well-placed to achieve such bilingualism. The Forum's participants agreed they would seek to enhance educational cooperation at all levels. The early establishment of the Instituto Cervantes in Gibraltar would contribute to the achievement of those objectives, they said.[13]

F. Crime and crime prevention

40. In July 2008, the ministerial meeting of the Forum of Dialogue agreed that the three sides must fight against crime, including all types of organized crime and illegal immigration, at both the police and customs and the judicial levels. They were therefore committed to ensuring as close cooperation as possible and would carry out a thorough review of all aspects of such cooperation and an examination of

[19] See CIA World fact book, 19 June 2008, accessed at www.cia.gov.

[20] See Government of Gibraltar, press release, 23 July 2008, accessed at www.gibraltar.gov.gi.

[21] See Government of Gibraltar, press release, 21 August 2008, accessed at www.gibraltar.gov.gi.

ways to improve it, including exchange of information and operational cooperation and communications.[21]

41. As previously reported, law enforcement in the Territory is the responsibility of the Royal Gibraltar Police, in conjunction with the Gibraltar Police Authority established under the Police Act 2006, No. 2006-20, which came into effect on 22 February 2007. In accordance with the Act, the Governor has overall, ultimate responsibility for the integrity, probity and independence of policing in Gibraltar and for the policing aspects of national security, including internal security. The 2007/2008 annual report from the Gibraltar Police Authority points to a significant year-on-year rise in crime levels, with the total number of crimes recorded as having increased by approximately 8 per cent, from 3,399 to 3,675 crimes.[22]

VI. Forum of Dialogue on Gibraltar

42. Negotiations between the United Kingdom and Spain on the subject of Gibraltar led in 2004 to the establishment of a Forum of Dialogue on Gibraltar, separate from the Brussels Process. As previously reported, a joint press release by the Spanish Ministry of Foreign Affairs, the British Foreign and Commonwealth Office and the Government of Gibraltar, dated 16 December 2004, stated inter alia that in the Forum, "without prejudice to their constitutional status (including the fact that Gibraltar is not a sovereign independent State), each of the three parties will have its own, separate voice and each will participate on the same basis. Any decisions or agreements reached within the Forum must be agreed by all three participants. If the three parties wish to take a decision on an issue in the Forum where formal agreement would properly be between the United Kingdom and Spain, it is understood that the United Kingdom will not agree thereto without the Government of Gibraltar's consent".

43. Since the establishment of the Forum, there have been several rounds of discussions, both before and after the ministerial meeting of the Forum on 18 September 2006, when a package of agreements, known as the Córdoba agreements, was reached. The agreements, subsequently also known as the Córdoba Statements, are aimed at enhancing the economic and social development of both Gibraltar and the surrounding region, in particular the Campo de Gibraltar, and cover such areas as pensions for pre-1969 Spanish workers in Gibraltar, the Gibraltar Airport, telecommunications, the fence/frontier and the establishment of an Instituto Cervantes in Gibraltar.[23] Implementation of the agreements is ongoing.

44. On 2 July 2008, a ministerial meeting of the Forum took place in London. The resulting ministerial communiqué inter alia stated that the three sides had reviewed progress in the implementation of the Córdoba Statements. Moreover, the Forum expressed the intention to create a constructive atmosphere of mutual confidence and cooperation for the benefit and prosperity of Gibraltar and the whole region, in particular the Campo de Gibraltar, and to ensure that cooperation and mutual trust became the norm. The three sides endorsed the broad objectives of the future agenda, which would encompass cooperation on the environment; maritime communications; judicial, customs and police cooperation; financial services and

[22] Gibraltar Police Authority Annual Report 2007-2008, 22 September 2008.

[23] See www.gibnet.com/texts/trip_1.htm.

taxation; visa-related issues and education, with a view to reaching agreements at future ministerial meetings of the Forum. They reaffirmed that, as was the case with the Córdoba Statements, any agreements in those areas would have no implications whatsoever regarding sovereignty and jurisdiction.

45. The communiqué concluded that, since its meeting in Gibraltar in March 2007, the Forum had been developing working papers setting out detailed objectives in relation to the aforementioned new agenda issues. Accordingly, the three sides agreed that the Forum would meet in September 2008 to finalize the specific objectives for each of those areas and the methodologies for achieving them. The Forum would meet at the ministerial level to reach agreements within the next 12 months.[13]

46. From 29 to 31 October 2008, the Forum of Dialogue on Gibraltar met in Gibraltar at the non-ministerial level. The participants worked intensively on the drafting of documents setting out specific objectives and methodologies for cooperation in the areas of the environment, maritime communication and safety, financial services and taxation, and judicial, police and customs issues, as well as education and visa issues. The participants decided to meet again in the framework of their joint ministerial commitment made in London in July 2008 and looked forward to moving into the phase of negotiating agreements, to be reached by mid-2009.[24]

VII. Future status of the Territory

A. Position of the administering Power

47. In a statement at the 3rd meeting of the Special Political and Decolonization Committee (Fourth Committee), held on 7 October 2008, during the sixty-third session of the General Assembly, the Permanent Representative of the United Kingdom, Sir John Sawers, intervened in exercise of the right of reply. As reflected in the summary record of that meeting (see A/C.4/63/SR.3.), the Permanent Representative stated, inter alia, that the United Kingdom welcomed the continued progress of the trilateral process of dialogue among the Governments of the United Kingdom, Spain and Gibraltar, including an ambitious programme of work agreed across six new areas of cooperation. The agreements already reached were having a tangible impact on the quality of life of thousands of people in both Gibraltar and Spain. Those agreements were without prejudice to the respective positions of the United Kingdom and Spain on sovereignty, on which the United Nations had not taken a view.

48. Moreover, the Permanent Representative said that the new constitution of Gibraltar provided for a modern relationship between Gibraltar and the United Kingdom. It was regrettable that the outdated approach of the Special Committee on Decolonization seemed not yet to have allowed for that to be recognized. The criteria used by the Committee to determine whether a Non-Self-Governing Territory should be "de-listed" failed to take into account the fact that the relationship between the United Kingdom and Gibraltar had been modernized in a

[24] Government of Gibraltar, press release, 31 October 2008, accessed at www.gibraltar.gov.gi; see also www.gibfocus.gi, 3 November 2008.

manner acceptable to both sides. Gibraltar was now politically mature, and its relationship with the United Kingdom was non-colonial in nature. Continuing, the Permanent Representative said that, as a separate Territory recognized by the United Nations, Gibraltar enjoyed the individual and collective rights accorded by the Charter of the United Nations. The new constitution therefore confirmed the right to self-determination of the Gibraltarian people. That right was not constrained by the Treaty of Utrecht except in so far as it gave Spain the right of refusal should Britain ever renounce sovereignty. Thus, independence would only be an option with Spanish consent. His Government recognized that the act of deciding, in the referendum, to accept the new constitution was an exercise of the right of self-determination by the Gibraltarian people.

49. The Permanent Representative went on to say that the United Kingdom retained full international responsibility for Gibraltar, including its external relations and defence, in full accord with the freely expressed wishes of the people of Gibraltar. His Government did not accept that the principle of territorial integrity had ever been applicable to the decolonization of Gibraltar nor that the existence of a sovereignty dispute implied that the people of Gibraltar did not have the right to self-determination. The United Kingdom reaffirmed its long-standing commitment to the people of Gibraltar that it would never enter into arrangements under which they would pass under the sovereignty of another State against their wishes, and any reference to the Brussels Process needed to be understood in that context. The Permanent Representative concluded by saying that the United Kingdom continued to enjoy very cordial relations with Spain and would continue to work amicably with it on all Gibraltar-related issues.

B. Position of the territorial Government

50. Speaking to the Fourth Committee on 7 October 2008, the Chief Minister of Gibraltar, Peter Caruana, stated, as reflected in the summary record of that meeting, that as far as the people and government of Gibraltar were concerned, the "question of Gibraltar" was no longer a question of decolonization, for that had now been settled by means of a new constitutional arrangement approved by the people of Gibraltar in a referendum of self-determination. Gibraltar's decolonization model was obviously different from that chosen by most colonial Territories in the past, namely sovereign independence. It had opted for the best model for itself.

51. Moreover, the Chief Minister said Gibraltar had been a victim of the Special Committee's application of the "invented doctrine" that when there was a sovereignty dispute affecting a Territory, the principle of self-determination did not apply to the process of its decolonization, and that the supposed national integrity of a claimant country was an acceptable decolonization consideration, regardless of the wishes of the colonial people. The Chief Minister went on to say that the Special Committee had no mandate to deal with sovereignty disputes, which instead had to be dealt with on their merits and separately from decolonization and self-determination, because different principles applied. Since his government had broken its ties with the Special Committee and had acted alone to achieve its own decolonization, it urged the General Assembly to act directly to remove Gibraltar from its list of Non-Self-Governing Territories, as the United Kingdom continued to report under Article 73 *e* of the Charter only because the Charter required it to do so until the General Assembly "de-listed" Gibraltar.

52. Continuing, the Chief Minister stated that the annual resolution adopted by the Fourth Committee on the question of Gibraltar did not represent a consensus insofar as the United Kingdom and Spain were concerned, but rather masked profound disagreement. Worse yet, the resolution considered the Brussels Process to be ongoing, even though there had been no meeting between the United Kingdom and Spain under the Brussels Declaration since 2001.

53. Concluding, the Chief Minister said that, in the new trilateral Forum of Dialogue on Gibraltar enabling discussions between Spain, Gibraltar and the United Kingdom, Spain was free to raise the question of sovereignty. In the meantime, good agreements had been reached in the context of the Forum, and an ambitious new agenda of issues had been identified. His government warmly welcomed the very significant improvement in relations between Gibraltar and Spain in the trilateral dialogue and looked forward to building on it.

C. Position of the Government of Spain

54. Also at the 3rd meeting of the Fourth Committee, the Permanent Representative of Spain, Juan Antonio Yáñez-Barnuevo, made a statement on the question of Gibraltar, as reflected in the summary record of that meeting. The Permanent Representative said that United Nations resolutions had consistently recognized that Gibraltar's colonial status was in violation of the Charter because it undermined Spain's territorial integrity. In addition, it was a doctrine of the General Assembly that, in the case of Gibraltar and a few other Non-Self-Governing Territories, decolonization could occur only after the sovereignty issues were resolved. The Pacific Regional Seminar on Decolonization held in May 2008 had in fact confirmed the uniqueness of the decolonization of Territories where sovereignty issues were involved (see A/63/23).

55. The Permanent Representative went on to say that in 1980 Spain and the United Kingdom undertook to resolve the problem of Gibraltar in a spirit of friendship and in compliance with United Nations resolutions, and in 1984 they signed the Brussels Declaration. The Brussels Process was set in motion the following year. However, although his Government had repeatedly expressed its willingness to resume negotiations on the sovereignty issues relating to Gibraltar, no bilateral meeting had been held since 2002.

56. Continuing, the Permanent Representative stated that Spain could not accept Britain's contention that its new constitutional decree concerning Gibraltar, ratified by a referendum in the Territory, had made the fulfilment of earlier United Nations resolutions moot. Gibraltar's status was still that of a colonial Territory. The United Kingdom's claim that it was justified in not resuming negotiations with Spain because of its commitment to the people of Gibraltar not to reach understandings regarding sovereignty without their consent was also unacceptable. The United Nations position, confirmed in successive resolutions, was that the decolonization of Gibraltar could be the result only of bilateral negotiations between Spain and the United Kingdom, in view of the sovereignty dispute and the related issue of Spain's territorial integrity. In the case of Gibraltar, the principle of self-determination therefore did not apply.

57. Concluding, the Permanent Representative said that, with a view to furthering the well-being and economic development of the inhabitants of Gibraltar, Spain was

determined to continue working within the Forum of Dialogue on Gibraltar, a separate framework from that of the Brussels Process. Spain was fully committed to dealing with questions of local cooperation in the context of the Forum, which it hoped would create the climate of cooperation needed to resolve all its differences with the United Kingdom regarding the colonial status of Gibraltar.

D. United Kingdom-Spain negotiations

58. There were no bilateral negotiations on Gibraltar during 2008 within the framework of the so-called Brussels Process, which is separate from the Forum of Dialogue on Gibraltar. According to information provided by Spain, the questions on sovereignty came up in conversations between Spain and the United Kingdom.

E. United Kingdom-Gibraltar discussions

59. The Governments of the United Kingdom and Gibraltar have both recognized that the 2006 Constitution provides for a modern and mature constitutional relationship between the two sides, one which is not based on colonialism.

60. As previously reported, as part of a review conducted during 2007/2008 by the House of Commons Foreign Affairs Committee on the British Overseas Territories, the Chief Minister gave evidence on 5 March 2008 with regard to the Territory.[25] On the subject of decolonization, the Chief Minister stated, in a written submission made available to the press, that both the territorial Government and the Government of the United Kingdom believed that the United Nation's de-listing and decolonization criteria were anachronistic. Nonetheless, the Chief Minister recognized that, under Article 73 *e* of the United Nations Charter, the United Kingdom was obliged to continue to submit annual reports until such time as the General Assembly voted in favour of the removal of a Territory from its list of Non-Self-Governing Territories. The United Kingdom was not free to unilaterally discontinue the submission of annual reports about Gibraltar.

VIII. Consideration by the United Nations

A. Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples

61. A representative of Spain attended the Pacific regional seminar on the implementation of the Second International Decade for the Eradication of Colonialism, held at Bandung, Indonesia, from 14 to 16 May 2008, and made a statement.

62. The Special Committee discussed the question of Gibraltar at its 9th meeting, on 18 June 2008 (see A/AC.109/2008/SR.9), and had before it the 2008 working paper concerning the Territory. Statements were made by the representative of Spain and the Chief Minister and the leader of the opposition in Gibraltar. On the proposal

[25] www.publications.parliament.uk/pa/cm200708/cmselect/cmfaff/uc147-iv/uc14702.htm.

of the Chairman, the Committee decided to continue consideration of the question at its next session and, in order to facilitate consideration of the question by the Fourth Committee, to transmit the relevant documentation to the General Assembly.

B. Special Political and Decolonization Committee (Fourth Committee)

63. The Fourth Committee of the General Assembly considered the question of Gibraltar at its 3rd meeting, on 7 October 2008. At that meeting, statements were made by the Permanent Representative of Spain, Juan Antonio Yáñez-Barnuevo, the Chief Minister of Gibraltar, Peter Caruana, and a petitioner, Joseph Bossano, leader of the opposition. In exercise of the right of reply, the Permanent Representative of the United Kingdom, Sir John Sawers, referred to the statement made by the representative of Spain. At its 7th meeting, on 13 October, the Fourth Committee adopted a draft decision on the question of Gibraltar (see A/C.4/63/L.4) without a vote.

C. Action by the General Assembly

64. At its 64th plenary meeting, on 5 December 2008, the General Assembly, on the recommendation of the Fourth Committee, adopted a decision without a vote. The decision (decision 63/525) read as follows:

> "The General Assembly, recalling its decision 62/523 of 17 December 2007 and the statements agreed to by the Governments of Spain and the United Kingdom of Great Britain and Northern Ireland in Brussels, on 27 November 1984,[1] and in Madrid, on 27 October 2004, and noting the establishment, pursuant to the latter, of the tripartite Forum of Dialogue on Gibraltar, separate from the Brussels Process, under the statement made jointly by the Governments of Spain, the United Kingdom and Gibraltar on 16 December 2004:
>
> (a) Urged both Governments, while listening to the interests and aspirations of Gibraltar, to reach, in the spirit of the statement of 27 November 1984, a definitive solution to the question of Gibraltar, in the light of relevant resolutions of the General Assembly and applicable principles, and in the spirit of the Charter of the United Nations;
>
> (b) Welcomed the ongoing successful implementation of the first package of measures concluded at the tripartite Forum of Dialogue on Gibraltar and the shared will to reach new agreements by July 2009."

"[1] See A/39/732, annex."